

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA

AUDREY MYERS, Personal Representative
of the Estate of MICHAEL EDWIN SMITH,
(now Deceased),

Plaintiff,

vs.

No. 17-CV-90-RAW

1) BOARD OF COUNTY COMMISSIONERS
of MUSKOGEE COUNTY;

2) ROB FRAZIER, SHERIFF OF MUSKOGEE
COUNTY, in his Official Capacities;

3) TURN KEY HEALTH CLINICS, LLC;

4) DOES II THROUGH XX;

Defendants.

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TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE RONALD A. WHITE
UNITED STATES DISTRICT JUDGE

OCTOBER 9, 2018

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REPORTED BY:

KEN SIDWELL, CSR-RPR
United States Court Reporter
P.O. Box 3411
Muskogee, Oklahoma 74402

A P P E A R A N C E S

MR. ALLEN W. COUNTS, 436 Court Street, Suite A,
Muskogee, Oklahoma, 74401, and

MR. LOWELL G. HOWE, P.O. Box 1972, Muskogee, Oklahoma,
74402, Attorneys on behalf of the Plaintiff;

MR. ANDY ARTUS, Collins, Zorn & Wagner, P.C., 429
Northeast 50th, Second Floor, Oklahoma City, Oklahoma 73105,
Attorney on behalf of the Defendant Muskogee County Board of
County Commissioners;

MS. ALEXANDRA G. AH LOY and MS. PAULINA THOMPSON,
Johnson, Hanan & Vosler, 9801 North Broadway Extension,
Oklahoma City, Oklahoma, 73114, Attorneys on behalf of
Defendant Turn Key Health Clinics, LLC.

1 OCTOBER 9, 2018 PROCEEDINGS

2 *(On the record at 10:02 a.m.)*

3 THE COURT: All right. We're on the record in
4 CIV-17-90, Audrey Myers versus Board of County Commissioners
5 of Muskogee County, Rob Frazier, Turn Key Health Clinics,
6 and Does II through XX, which I assume are out of the
7 picture now. Counsel, enter their appearances, please.

8 MR. HOWE: Your Honor, Lowell Howe for the
9 plaintiff, Audrey Myers.

10 THE COURT: Okay. Let's -- you all haven't been
11 here for a while. You need to use the microphone at the
12 table. Thank you. Nothing like help from opposing counsel.
13 Okay. Go ahead.

14 MR. HOWE: Your Honor, Lowell Howe for the
15 plaintiff, Audrey Myers.

16 THE COURT: Okay. Mr. Counts.

17 MR. COUNTS: Your Honor, Allen Counts for
18 plaintiff, Audrey Myers.

19 THE COURT: Thank you.

20 MR. ARTUS: Your Honor, Andy Artus for the Board
21 and Sheriff Frazier.

22 THE COURT: Thank you.

23 MS. AH LOY: Alexandra Ah Loy for Turn Key Health
24 Clinics, LLC.

25 MS. THOMPSON: Your Honor, Paulina Thompson for

1 Turn Key Health Clinics, LLC.

2 THE COURT: Thank you. Okay. You're going to
3 have to keep me honest on who represents whom. Mr. Artus,
4 I'm pretty sure I'll keep that clear. Mr. Howe, Mr. Counts,
5 I'll keep that clear. Ladies, I'll -- I might get you mixed
6 up, so I'll try not to do that, okay?

7 Let's go -- there's so much floating around
8 in this case. If I have trouble keeping up with that, too,
9 please forgive me. First thing let's do is take the easy --
10 I hope it's the easy one first. The motion to seal
11 exhibits, the summary judgment motion.

12 MS. AH LOY: Your Honor, I think, at this point, I
13 can withdraw that motion as moot. I filed the dispositive
14 motion. I was able to do it without filing under seal.

15 THE COURT: Okay. Thank you. So that will be
16 considered moot. See, told you that was easy.

17 Okay. I think then the only motion left
18 pending is plaintiff's motion for extraordinary -- I mean,
19 motion to extend all deadlines by 90 days because of
20 extraordinary circumstances.

21 Let's see. I'm trying to think of the
22 primary defendant. I think, Mr. Artus, that would be you.
23 No offense, okay? I'm just thinking. I'm trying to figure
24 out how I'm going to have people talk because, as you know,
25 I usually don't have one side go and then the other, I have

1 everyone at the microphone so they can -- they can chip in
2 what they want when I ask them to. So what I usually do is
3 have lead defendant and the plaintiff, one of them get up
4 here and one get at the back podium. Usually as far as who
5 gets up here, we draw straws and the loser has to get up at
6 the front. But however you want to do it is fine.

7 MR. ARTUS: Well, I think, for this motion, I will
8 let Turn Key be the lead defender of it.

9 THE COURT: Okay. Great.

10 MR. ARTUS: I, quite honestly, piggy-backed on
11 their motion. But I am prepared to say my --

12 THE COURT: And you can stay there and do it.
13 Okay. What's your last name? Ah Loy. Okay. Thank you.
14 Come on up here. Mr. Howe, you lead?

15 MR. HOWE: Yes, Your Honor, I am.

16 THE COURT: Why don't you get at the back -- back
17 podium, okay? And then, Mr. Counts, you make sure that
18 microphone is nearby in case I need to call on you, okay?

19 MR. COUNTS: I will, Your Honor. Thank you.

20 THE COURT: Mr. Artus, you know the drill, I
21 assume. Okay. Am I correct -- okay. Mr. Howe -- okay.
22 There you go. You got to have your computer for this?

23 MR. HOWE: Well, I had some notes and made an
24 email, so it's the way I have them to bring them out.

25 THE COURT: Okay. Well --

1 MR. HOWE: I did not anticipate it, Judge.

2 THE COURT: That's fine. Are you going to be able
3 to look at them at the podium, because we've got to keep you
4 near the microphone is the only thing.

5 MR. HOWE: What I'll do -- excuse me. Your Honor,
6 what I'll do when I refer to the notes is I'll have the
7 podium here, so that way I will be able to see them and the
8 Court will be able to hear me.

9 THE COURT: Okay. Well, you can -- if you need to
10 move the podium, you can do that.

11 MR. HOWE: Sure.

12 THE COURT: Whatever you want to do. Okay. Am I
13 correct that the only pending motion is the motion for
14 extension of deadlines by the plaintiff?

15 MR. HOWE: Your Honor, that is correct.

16 THE COURT: Okay. Here's my first question, and
17 this was pointed out consistently in the defendants'
18 response, is -- Lowell, you know I have no reason at all to
19 doubt your word. I don't have reason to doubt anyone's word
20 in this room, okay, and I don't. Doesn't mean I can't doubt
21 the circumstances of your expert, okay? Never met him.
22 Don't know him. I have to agree with defendants that it's
23 sort of a weird circumstance that he drops out at the last
24 minute.

25 And as their response pointed out, you've

1 provided no medical evidence justifying Dr. Stark's request
2 to withdraw. I guess he doesn't have to request. He just
3 gets to. If he does, and I don't give you more time, then
4 you're basically -- going to use the -- can't use the
5 correct colloquialism. If I don't let you get a new one,
6 then you're done.

7 And I do appreciate the defendants implicitly
8 recognizing that, and know that I'm probably not going to
9 let that happen, so -- but I need to ask you, before I
10 let -- I'm not very happy with your expert witness right
11 now. It has nothing to do with you. I think it seemed that
12 you contacted people just about as quickly as you could.
13 And it seems like you all were working together before that
14 to get this stuff done, even if maybe a little late. You
15 know, what the judge doesn't know won't hurt him, and I
16 understand that. But where's the evidence of his medical
17 condition?

18 MR. HOWE: Your Honor, as I sit here today, I do
19 not have any medical records. If the Court --

20 THE COURT: Why?

21 MR. HOWE: -- requires me to get those medical
22 records, I notified Dr. Stark that, if I appear at the
23 hearing and the Court requests medical evidence, then I
24 would like for him to provide that to me. I'm not sure
25 about the ability of the Court to compel that from him, but

1 I did --

2 THE COURT: Watch me.

3 MR. HOWE: Well, I agree -- I agree with that.

4 But what I can tell you, Your Honor, is that I have been
5 blindsided by this issue just as much as everyone here.

6 THE COURT: Well, you're not quite that blindsided
7 because it wasn't -- it was soon after you filed your motion
8 that I ordered an expedited response, I believe. I would
9 like to pat myself on the back and note that, by ordering
10 expedited responses, we're here at a hearing within 15 days
11 instead of just getting response on file. I know that puts
12 a burden on both sides. But my view is get these -- get
13 these discovery matters over with as quickly as possible,
14 that way I can hold your feet to the fire to the other
15 deadlines as well.

16 Anyway, back to what was I saying, defendants
17 pointed out over and over in their response, not a shred of
18 medical evidence. And yet, as you sit here today, you tell
19 me you still don't have any.

20 MR. HOWE: Your Honor, as I sit here today, I
21 still do not have any. The only --

22 THE COURT: Why? I mean, it was obviously an
23 issue.

24 MR. HOWE: It was obviously an issue with Dr.
25 Stark. As I can notify Dr. Stark, and, Dr. Stark, I

1 notified him of the motions hearing that we're having today,
2 that if the Court needed to contact him to inquire, to make
3 himself available. And I believe Dr. Stark, if the Court
4 would like to contact him, would be able to articulate what
5 the medical issue is. Also, I believe that I could provide
6 the Court, maybe within five days or so, the medical
7 evidence.

8 Before coming to this hearing, I was not
9 exactly certain of what the Court would require. And,
10 therefore, what I would ask is, if the Court does require
11 that I provide it with medical evidence of Dr. Stark's
12 reasoning, then I'll be happy to do that.

13 THE COURT: Okay. Well, this is -- I do want
14 medical evidence of his inability, not unwillingness, but
15 his inability to serve as an expert in this case by -- no,
16 we'll give you until next Tuesday, okay?

17 MR. HOWE: Yes, Judge.

18 THE COURT: Okay. And that would be appreciated.
19 Of course, here's -- here's the deal, and I'm not impugning
20 Dr. Stark at all. I know nothing about him. If he's being
21 up front and honest and truthful about his condition, he'll
22 have no problem getting the records. If he's being
23 dishonest and untruthful about his condition, he'll get the
24 records anyway, because --

25 MR. HOWE: Right.

1 THE COURT: -- I mean, that's just -- that's just
2 the way things work. But I still want to see something, no
3 matter what. Okay. Now --

4 MR. HOWE: Yes, Judge. I apologize. I will
5 immediately contact Dr. Stark after this hearing and tell
6 him to provide me with whatever relevant medical records
7 related to his condition that the Court has ordered, and
8 that I need to have them no later than Friday so I can have
9 them to you by Monday.

10 THE COURT: Okay. Ms. Ah Loy, is that
11 appropriate?

12 MS. AH LOY: Yes, I think that's appropriate.

13 THE COURT: Okay. Anyone object?

14 MR. ARTUS: No, Your Honor.

15 MS. AH LOY: I do have a suggestion that maybe we
16 should submit this to you for in camera review instead of
17 filing them of record.

18 THE COURT: Oh, absolutely. Thank you. Thank
19 you. Yes. Mr. Howe, do that. Get them, review them, send
20 them to counsel, and then send them to my office. We're not
21 going to review those. I mean, we're going to review them.
22 We're not going to file them of record, okay? And you can
23 assure the doctor of that. And afterwards, they'll be
24 shredded, okay?

25 MR. HOWE: Yes, Your Honor.

1 THE COURT: I mean, assuming they don't become
2 exhibits at some hearing we don't even want to think about.
3 So we'll do that.

4 Now, let me ask you this, Mr. Howe -- and I'm
5 sorry you're getting grilled, but you're the one asking for
6 the relief.

7 MR. HOWE: Your Honor, I came ready.

8 THE COURT: Long weekend, huh?

9 MR. HOWE: At least it's not an 8:00 o'clock
10 hearing, Your Honor. That would have made me a little more
11 nervous.

12 THE COURT: At least what?

13 MR. HOWE: The 8:00 o'clock motions hearing, those
14 are the ones that make me a little nervous. The fact that
15 you set it for 10:00 --

16 THE COURT: I haven't had one of those for
17 probably 14 years, and I don't think it was you.

18 MR. HOWE: Okay. Well, Your Honor, it wasn't, but
19 I was hoping today it wasn't going to be me.

20 THE COURT: Okay. Well, I hope it didn't ruin
21 your Columbus Day. Tell me you've already started the
22 process of getting another expert.

23 MR. HOWE: Yes, I have, Your Honor.

24 THE COURT: Very good. How far along are you?

25 MR. HOWE: Your Honor, the issue that we have

1 before the Court is, one, before the Court is counsels'
2 request to limit the testimony to that of a
3 hematologist-oncologist. And I believe that, if that is the
4 case and the Court were so to do that, one, I believe that
5 there would be no point in getting an expert, because I
6 believe that the thrust of their argument is that Dr. Stark
7 wasn't qualified to give an opinion other than causation
8 anyways.

9 So, therefore, Your Honor, what I would ask
10 is, if the Court would provide me the ability to retain
11 experts to not only support my client's case in chief, but
12 also the rebuttal to the defendant's experts. I've been
13 working diligently on that.

14 THE COURT: Well, so you'd have to be -- have been
15 doing that even if Dr. Stark hadn't withdrawn.

16 MR. HOWE: Your Honor, it was not until Dr. Stark
17 withdrew and the counsel brought to my attention in a
18 motion -- or in their response to my motion that there was
19 an issue with the ability of my expert to provide one or
20 both of his opinions. One was a standard of care opinion.
21 The second one was a causation issue. It was not until Dr.
22 Stark actually had notified me of the withdrawal and that I
23 filed my motion, that counsel then specifically stated in
24 their motion that they did not believe that Dr. Stark had
25 the ability to testify to provide the opinions that he was

1 required to in this case.

2 THE COURT: Well, you disagree with that, don't
3 you?

4 MR. HOWE: Your Honor, I vehemently disagree with
5 that. However, the concern that I have, Your Honor, is
6 that, if we were to go and only hire a hematologist or
7 oncologist for my case in chief, I believe that we would not
8 gain any traction, and then I would be stuck at an issue
9 where then we have counsel arguing a *Daubert* hearing
10 alleging that my new hematologist or oncologist is not
11 qualified to give the opinion that I hired this expert to
12 substitute to.

13 So what I'm trying to bring to the Court,
14 Your Honor, is that, in this whole instance, this case has
15 been highly -- there have been highly unusual circumstances
16 throughout this case.

17 THE COURT: Well, that's why it's -- that's why
18 it's such an old case.

19 MR. HOWE: Right. I --

20 THE COURT: And that's why I'm trying to get it
21 done.

22 MR. HOWE: I understand that, Your Honor. And my
23 responsibility as an advocate is to, one, make sure that we
24 get it done. But, secondly --

25 THE COURT: Yeah, but your --

1 MR. HOWE: -- to make sure that I can move forward
2 and present this Court with evidence that would withstand
3 any supposed issues that the defendants have alleged would
4 be insufficiency in my expert's qualifications to provide
5 the expert testimony that I'm seeking to obtain.

6 THE COURT: Okay. Well, let me -- let me give you
7 my rant that, unfortunately, Mr. Artus has heard before.
8 You know, the Supreme Court, within the last three or four
9 years rewrote Rule 1 about the just, speedy and inexpensive
10 resolution of every case. And they made a big deal out of
11 it. They really wanted judges to get involved to make that
12 happen. And yet, at the same time, for the past 20 years,
13 their substantive rulings from the bench have done exactly
14 the opposite. And part of this happened while I was still
15 practicing. When *Celotex* and *Liberty Lobby* were decided,
16 suddenly there's a summary judgment motion in every case.
17 When *Twombly* and *Iqbal* were decided, suddenly there's a
18 motion to dismiss in every case. Every case. And then when
19 *Daubert* was decided, guess what, there's no such thing as an
20 expert disqualified or that's given a reliable opinion in
21 every case that there's an expert. So I can't believe that
22 you're suffering unfair surprise here because, poof, what,
23 defendants are actually objecting to the qualifications of
24 my expert? I mean, really?

25 MR. HOWE: Judge, that is --

1 THE COURT: Doesn't that happen in every -- don't
2 stop me.

3 MR. HOWE: I did not mean to, Your Honor.

4 THE COURT: Okay. Doesn't that happen in every
5 one of your cases with an expert, except maybe an economist
6 or something like that? I mean, doesn't it happen that they
7 challenge the qualification -- not these guys. But in any
8 case you have, defense counsel qualified -- challenged the
9 qualifications of your expert, or his or her opinion?

10 MR. HOWE: Judge, I understand what you are
11 saying, and in every case I do expect a challenge from the
12 defendants to the expert testimony and the qualifications.
13 In this case, I had a -- Dr. Stark was a
14 hematologist-oncologist. He's a Yale undergrad, Harvard med
15 school --

16 THE COURT: I read his --

17 MR. HOWE: -- board certified internist, so --

18 THE COURT: I read his report.

19 MR. HOWE: Sure. So my understanding is that, in
20 the opinions that he provided, not only did the policies of
21 the jail fell beneath the standard of care, but also the
22 causation by them not getting my client to the hospital on
23 time, that that is what -- that had they gotten him to the
24 hospital on time, that the impingement on the nerve could
25 have been prevented. So he not only had a component of one,

1 that their conduct fell beneath the standard of care, but,
2 secondly, also as to causation.

3 Dr. Stark, I've previously -- and I provided
4 the Court -- because this was an issue that I, myself,
5 wanted to clear up and understand, I provided to the Court
6 an Appendix 1 attached to my response -- or my reply to
7 their response to this motion, and I set forth what happened
8 in two different cases. I set forth what happened in the
9 case involving Higgins, the Estate of Bigpond vs. United
10 States of America, which was a claim for medical negligence
11 against the United States, who was a party for Indian
12 hospital services. And I also attached the report for Dr.
13 Stark in that case.

14 In that case, it was also a federal case.
15 Dr. Stark provided me not only two opinions, but he provided
16 me one as to the standard of care, that the general
17 practitioner's acts or omissions and treatment of my client
18 were beneath the standard of care. The second issue that I
19 addressed was a causation. And I provided a parallel where
20 he provided me both of those opinions. In Bigpond, there
21 was never an issue where Dr. Stark's deposition was actually
22 taken, or that we were even -- that a motion for summary
23 judgment was filed or needed to be responded to, or *Daubert*
24 issues were filed. So, therefore, relying --

25 THE COURT: None of them? I'm sorry.

1 MR. HOWE: Yes, Your Honor.

2 THE COURT: None of those were done?

3 MR. HOWE: The case settled.

4 THE COURT: Okay. So, but none -- it settled
5 before any of those have been done?

6 MR. HOWE: That is correct, Your Honor.

7 THE COURT: Okay. Well, that would make sense,
8 otherwise I was thinking that everyone was out of it. But,
9 okay. So it makes sense. It was settled. Okay. Okay.
10 Ms. Ah Loy, your opportunity to go off on him.

11 MS. AH LOY: Okay.

12 THE COURT: I mean that with all Christian love.

13 MS. AH LOY: I think there may have been some
14 misinterpretation in our response brief. We do think --

15 THE COURT: But by me or --

16 MS. AH LOY: By plaintiff's counsel.

17 THE COURT: Okay.

18 MS. AH LOY: And by no fault of plaintiff's
19 counsel. I'm not criticizing him. It could have been just
20 use of loose language by me. I didn't intend to file
21 anything close to a *Daubert* argument in my response brief.
22 Am I too close to this?

23 THE COURT: Do what?

24 MS. AH LOY: Am I too close to this?

25 THE COURT: Oh, god, no, you're not too close.

1 The hardest thing we have to do is get people close
2 enough.

3 MS. AH LOY: Okay. I haven't filed a *Daubert*
4 motion. It is possible that we will file one, but I
5 wouldn't do that until after we've deposed an expert and
6 heard the bases of their opinions. So I'm not going to say
7 that I'm not going to file one. I just don't know at this
8 time.

9 The standard that we're dealing with here is
10 a failure to disclose experts in time, in effect.
11 Plaintiffs did timely disclose Dr. Stark. His withdrawal
12 from the case is unfortunate, but untimely. We've already
13 deposed 16 total witnesses in this case.

14 THE COURT: Some of them on Saturday.

15 MS. AH LOY: Yes. Yes. Four total on Saturday,
16 so defense counsel --

17 THE COURT: That's working hard. I appreciate
18 that.

19 MS. AH LOY: We have. And we've gone through
20 extraordinary efforts, to the credit of every attorney in
21 this case, to accomplish all the discovery we felt that we
22 needed within the time frame allowed. So the standard is --
23 and I'm sure I don't need to rehash this to you, but a big
24 consideration is the prejudice or surprise to the
25 defendants.

1 We have cross-examined every single witness
2 deposed so far based on the limited opinion set forth in Dr.
3 Stark's expert report. We did not anticipate that there
4 would be additional opinions or criticisms, and so we've --
5 our entire defense of this case, including how we've
6 questioned witnesses, has centered exclusively on that
7 expert report.

8 If plaintiff is allowed to go and get new
9 experts at this late stage, at the 12th hour of -- you know,
10 discovery is over -- I don't think that we would be able to
11 cure any prejudice by new -- addition of new opinions at
12 this time.

13 You know, and my strongest objection is to
14 adding new experts. I think plaintiff --

15 THE COURT: Right, and I've -- I mean, you're sort
16 of -- you know, and I, again, mean this amiably, not in any
17 way in degradation, but your argument's sort of, hey, judge,
18 don't let them do anything, don't give them any time, don't
19 let them -- wink, wink, nudge, nudge. And I know you have
20 to make that argument for your client. I know you don't
21 realistically expect me to do that.

22 The only issue is whether I let them get
23 additional experts to buttress what their original expert
24 would say. I don't really understand -- I don't really
25 understand why, if Dr. Stark was going to testify as to

1 standard of care and causation, why additional experts are
2 necessary. I mean -- I mean, I'm going to give you time to
3 get another expert, okay? The only question is how many and
4 what they get to testify on. I don't understand why, if Dr.
5 Stark was going to testify to standard of care and
6 causation, why additional experts other than one substitute
7 is necessary. Can you go over that again, Mr. Howe?

8 MR. HOWE: Yes, Your Honor. I believe the answer
9 to that is, I believe that Dr. Stark may have been stating
10 opinions --

11 THE COURT: That he --

12 MR. HOWE: -- that to where he was overreaching.
13 I mean, essentially, that's what I believe it was, Your
14 Honor.

15 THE COURT: Your forthcomingness is refreshing.
16 And so -- but then how do we deal with the -- what I think
17 is the certainly not irrational view of the defendants, that
18 you've taken -- that all these depositions have been taken
19 based upon Dr. Stark's possibly overreaching opinions, and
20 that sort of prejudices the defendants by having relied upon
21 that report, and then, if you have other experts come in and
22 give differing opinions, you're sort of putting all that
23 prior discovery to waste? That was a long, involved
24 question. I'm sorry. If you want me to break it -- if I --
25 if we were in a deposition, you could object and say

1 compound question.

2 MR. HOWE: Your Honor, I believe, if the Court
3 would allow me, I can respond to that concern.

4 THE COURT: Please. Go ahead.

5 MR. HOWE: First of all, I believe it's important
6 to bring to the Court's attention, of the 15 depositions
7 that were taken, 11 were taken by the plaintiff. And the
8 depositions that were taken were factual-based depositions.
9 We did not go into expert testimony --

10 THE COURT: Well, but the observations of the
11 symptoms and condition of Mr. -- of Mr. Smith were certainly
12 at issue and would have been relied upon by defendants'
13 experts to form an opinion in preparation for the deposition
14 of Dr. Stark himself.

15 Here's what I'm trying to keep -- here's what I'm
16 really trying to keep away from, is I'm trying to keep away
17 from you having to pay for any time and expense the
18 defendants are going to have incur because of your adding
19 additional experts. Know you're a plaintiff, know you're on
20 a contingency fee, know that's really not what you want to
21 do.

22 My second concern is not to prejudice the
23 defendants by really what -- I mean, it's obviously
24 surprise. It was a surprise to you. Okay. Is gauging the
25 unfairness of the surprise to the defendants. Okay? So

1 that's what I'm dealing with. Plus, I want to get the case
2 over with, and not because I just -- that's just my
3 predilection. It's been going on for a long time. And the
4 clients deserve to have it get over with, and, boy, I bet
5 you all would, sort of in the back of your head, like to get
6 it over with, too. I hated those cases that I hated.

7 Anyway, that's the position I'm in. How do I
8 do that? Because, I mean, obviously you're going to say,
9 well, judge, I hope you -- I hope you don't make me pay
10 anything, and I don't want to do that. I don't think that
11 would be -- I don't think that would go towards the ends of
12 justice. It would almost be punitive. So you all don't get
13 your hopes up, defense counsel. But that doesn't mean I
14 wouldn't limit -- I'm afraid I'd have to get too much into
15 the weeds as to standard of care and causation, more than I
16 want to, to really figure out what you're saying, okay?

17 And I don't fault defense counsel for pushing
18 this point in their advocacy of their clients, too. I
19 understand that. I would certainly be doing the same thing.
20 Any thoughts --

21 MR. HOWE: Yes.

22 THE COURT: -- before -- I'm going -- I'm going
23 to -- I want to hear all of you out, and -- but then I'll
24 probably take a little -- a little break before I come in
25 and tell you what I'm going to do. Go ahead, Mr. Howe.

1 MR. HOWE: Yes, Your Honor. First of all, I
2 believe the overriding issue in this case right now is
3 prejudice. We want to make sure that what this Court is
4 doing, that the prejudice by granting an order denying an
5 order does not outweigh the harm or the hardship on --

6 THE COURT: Okay. I'm going to grant your order
7 in part at least. I'll tell you that.

8 MR. HOWE: So -- so I can say that, in this case,
9 Your Honor, I'm not seeking to obtain expert testimony that
10 is going to be out of the purview or the scope of any of the
11 experts that the defendants have provided or presented.

12 THE COURT: Have you gotten their reports yet?

13 MR. HOWE: Their reports --

14 THE COURT: Yes.

15 MR. HOWE: -- were actually disclosed on October
16 5th I believe.

17 THE COURT: Okay.

18 MR. HOWE: So we just had those, and I just -- in
19 light of preparing for this motion, I have not had a chance
20 to truly go through those. But I can tell you that, as we
21 sit here today, Judge, without being able to get an expert
22 that's going to testify as to whether the jail policies and
23 procedures and the care provided fell beneath the standard
24 of care, essentially my case is dead.

25 With respect to an issue of causation, if I

1 can't get a neurosurgeon or another hematologist-oncologist
2 to testify as to causation, that, as a result of the delay
3 in my client's care, then my case is dead.

4 This is not something -- and the wildest part
5 about this case, Your Honor, is this is not a case where my
6 client was -- had suffered a broken finger at the jail and
7 then they didn't fix it, and then he has a crooked finger.
8 This is a case where my client is a Stage IV metastatic
9 cancer patient who is not only asking, but begging and
10 urging to be taken to the hospital.

11 And I will not have any other testimony,
12 other than as far as his symptoms, or what I believe were
13 the obvious symptoms that they should have recognized. I'm
14 not seeking to do that. I'm not seeking to obtain any other
15 testimony regarding the delay in -- whether delay is what
16 actually caused him to suffer this paralysis. But when we
17 look at the gravity of the harm and the denial of due
18 process that could occur, Your Honor, my client alleges that
19 he was a Stage IV metastatic cancer patient who needed to go
20 to the hospital because he was suffering --

21 THE COURT: Let me --

22 MR. HOWE: -- cord compression.

23 THE COURT: Let me stop you. And this isn't a
24 criticism, but you brought up someone hurting their finger
25 and it being ignored and their having a bent finger and this

1 stage -- metastatic cancer that's in Stage IV. I have
2 experience with both --

3 MR. HOWE: Yes, Your Honor.

4 THE COURT: -- okay? So getting into the --
5 getting into the merits isn't going to change what I'm doing
6 one way or the other, because I'm going to apply the same
7 rules the same way whether it's a broken finger or the Stage
8 IV cancer.

9 MR. HOWE: Yes, Your Honor.

10 THE COURT: I have to, otherwise I'll get too
11 emotional about it, and I'm not going to do that. So stick
12 to just the straight rules, okay?

13 MR. HOWE: Yes, Judge.

14 THE COURT: And so what is -- I mean, give me a
15 solution. How -- you want 90 days.

16 MR. HOWE: Judge --

17 THE COURT: And you want how many -- how many new
18 experts do you want?

19 MR. HOWE: Judge, what I'm asking is that, based
20 on the disclosures that have been provided by the
21 defendants, that I be afforded an opportunity to get an
22 expert who will be able to testify regarding the jail
23 policies and the standard of care. And I'm also --

24 THE COURT: Now, is this medical standard of care?

25 MR. HOWE: Yes, Your Honor.

1 THE COURT: Okay. That's fine.

2 MR. HOWE: And that I'm also seeking to obtain an
3 expert who will be able to testify to the causation element.
4 And I believe that's either going to have to be a
5 neurosurgeon, or maybe even a hematologist-oncologist like
6 in this case. So that is what I'm asking to do, Your Honor.

7 THE COURT: Okay. Ms. Ah Loy.

8 MS. AH LOY: Yes, Your Honor.

9 THE COURT: It seems to me that what -- other than
10 time -- I'm having trouble with the 90 days. Because if you
11 get in this position, even if it's no fault of yours, the
12 time element is going to work against you, okay? Because
13 I'm not -- I'm not going to -- I don't even want to say
14 sanction. I'm not going to make you pay additional fees and
15 costs, you know, incurred by the defendants because of this
16 happening. I'm not going to do that. Okay.

17 But, Ms. Ah Loy, what it seems like he's
18 really asking for is the -- can you hear me? Okay. What
19 he's really asking for is basically simply a -- I can never
20 think of a small word -- transmogrification -- no, a just
21 changing of the -- of the flow of expert reports. Usually I
22 require plaintiffs to go first, and then defendants to
23 rebut, and then plaintiffs to reply in their reports.

24 Basically what we'd be doing here is, you've
25 given your reports, and then he's going to get to give his.

1 Okay. Now, that's not the way I like to do it because I
2 think the plaintiff has the burden of proof. But that's
3 really all he's asking.

4 Second thing he's asking is to have two
5 experts instead of one giving opinions that -- and I don't
6 want to overstep what I'm quoting you, Mr. Howe. But giving
7 opinions that aren't overreaching like perhaps Dr. Stark's
8 were, which would seem maybe might be good for you guys.
9 Speculation? Don't know for sure. But if they're not
10 overreaching, I bet they'll be maybe not quite as strident
11 and not quite as damning, if you were. I don't know if
12 they're damning or not. But that's what I'm seeing.
13 Respond.

14 MS. AH LOY: From my perspective, I think
15 plaintiff's counsel made a strategic decision to name one
16 expert only, a hematology-oncologist. Now that he has taken
17 a step back and reviewed the depositions, he's realized the
18 burden of proof that he holds in this case, and he's
19 regretful of the consequences of his strategic decision.
20 And now he's asking for a second opportunity to completely
21 re-prosecute, re-litigate this case. That's what I object
22 to.

23 One other thing I think I need to touch on,
24 is he's talking about policies and procedures, opinions
25 about them. Dr. Stark's report contained no criticisms of

1 policies and procedures. He's known since at least I filed
2 my motion to dismiss that that would be the burden he would
3 have to prove in this case, the moving force. He's also
4 known that this case involved -- am I talking too quickly?
5 I'm sorry.

6 THE COURT: No, you're fine.

7 MS. AH LOY: He's also known since this case's
8 inception that it involved a delayed diagnosis of a spinal
9 cord expression. And he should have known, based on that
10 fact alone, that a neurosurgeon would be an expert he would
11 need to consult with. Again, I've not filed a *Daubert* as to
12 the hematology-oncologist, but I think it's fundamentally
13 unfair to the defendants to allow plaintiff a second bite of
14 the proverbial apple and to completely relitigate this case
15 because he regrets his strategic decision so far.

16 THE COURT: Okay. Well, what about my point that
17 I sort of made for you as devil's advocate, not that you all
18 are devils, but that the 15 depositions you've already taken
19 will, in effect -- I think you were implying this -- would,
20 in effect, be wasted if he has new experts giving new
21 opinions? I'm not sure that's really -- I think I -- I
22 think I overstated that.

23 MS. AH LOY: I agree with that statement. I do
24 think --

25 THE COURT: You agree --

1 MS. AH LOY: I do agree because --

2 THE COURT: You agree I overstated it?

3 MS. AH LOY: No, no. The prior statement. The
4 prior statement. I agree that those 15 depositions would be
5 essentially rendered meaningless to us, and we would have to
6 go and re-depose all of those witnesses again. Because we
7 really were moving from -- we received the expert report and
8 we said, okay, here are what the claims are. This is
9 actually limited from what we thought the claims initially
10 would be. Essentially Dr. Stark, his report says that he
11 suffered decreased quality of life. That's what his expert
12 opinion is. And so we've been defending this case from that
13 limited opinion.

14 THE COURT: Okay.

15 MR. ARTUS: If I may, Your Honor?

16 THE COURT: Certainly. I was going to -- I was
17 going to ask Mr. Counts, but -- yeah, let me ask Mr. Counts
18 first. Mr. Counts, anything you can add that --

19 MR. COUNTS: Well, Your Honor --

20 THE COURT: I mean, Mr. Howe is doing a fine job
21 and you can --

22 MR. COUNTS: He is, Your Honor. And I would defer
23 to him. The only thing I would say, Your Honor, is I don't
24 see there's any prejudice at all on either side to the
25 carriage of justice. And I think we deserve a chance to get

1 another expert in this case, Your Honor. This is totally
2 beyond our control. We had -- the gentleman apparently
3 cannot see. And we cannot ask him to go forward and render
4 an opinion --

5 THE COURT: Well, and I -- I'm sorry, I
6 interrupted.

7 MR. COUNTS: -- problems with his eyesight.

8 THE COURT: No, I respect you very much. That's
9 why I don't want to interrupt you.

10 MR. COUNTS: No, I'm -- I rely on Mr. Howe, Your
11 Honor.

12 THE COURT: Okay. Well, I mean, once again,
13 basically I've already informed you all I'm going to give
14 Mr. Howe some -- well, the plaintiff some relief, some extra
15 time, and some expert. The question is how much time, how
16 much expert, and what opinions. Go ahead, Ms. Ah Loy.

17 MS. AH LOY: I did have one other thing to add.
18 In my -- in our joint response to plaintiff's motion, I
19 cited to a large number of, you know, Northern District of
20 Oklahoma, Western District of Oklahoma court cases where
21 they were dealing with this precise factual scenario.

22 THE COURT: Which I like. I like other -- trying
23 to be like the other districts. Actually, I'd rather them
24 try to be like me, but --

25 MS. AH LOY: Well, it's an uncommon situation, so

1 there wasn't -- you know, there wasn't a lot on point.

2 THE COURT: Yeah.

3 MS. AH LOY: But in those -- almost universally in
4 all of those cases, they said, look, it is unfairly
5 prejudicial. The best way to cure it is to limit a new
6 expert to a substitution expert, and limit them to the four
7 corners of that report.

8 THE COURT: Mr. Artus.

9 MR. ARTUS: That's what I wanted. The purpose of
10 allowing a substitution of an expert, assuming of course Dr.
11 Stark is unable -- medically unable to testify and not just
12 unwilling. But the purpose to allow a substitution of an
13 expert is to put the movant, or the plaintiff here, in the
14 same position she would have been in but for the need of the
15 change of experts. But it is not an opportunity to
16 designate a better expert. That is where the unfairness
17 lies, and that's what the case law seems to say is, okay,
18 we're going to let you get one in, but we're going to keep
19 you -- we're going to keep you to what you had -- what you
20 had before, and that seems to balance the scales.

21 And what I'm hearing plaintiff's counsel
22 saying is he wants to get an expert to talk about policies
23 and procedures, which was nothing Dr. Stark ever talked
24 about. And so --

25 THE COURT: Doesn't that go to the standard of

1 care, though?

2 MR. ARTUS: Well, I -- well, to me, this case is
3 an official capacity case, and it's whether or not there are
4 policies and procedures that caused anyone to
5 constitutionally violate Mr. Smith's constitutional rights.
6 And, here, he's never designated anybody to talk about
7 policies and procedures about the jail or Turn Key. All
8 he's talked about is someone who reviewed the medical
9 records and came up with a medical opinion. And I think
10 anybody who's designated as a substitute should be just
11 that, a substitute, limited to what they had in the
12 beginning.

13 THE COURT: Ms. Thompson?

14 MR. HOWE: May I respond, Your Honor?

15 THE COURT: Let me go through defense counsel,
16 then I'll let you --

17 MR. HOWE: Oh, I apologize.

18 THE COURT: I'm sorry, no. Ms. Thompson, anything
19 you can add that would make my life a little more
20 complicated?

21 MS. THOMPSON: I would echo Mr. Artus' comments is
22 that, to cure the plaintiff's predicament, what you would
23 need -- and we understand that plaintiff is in a
24 predicament. Whether Dr. Stark is unwilling or unable, we
25 don't know at this time. It's just what he said, that he

1 was unwilling. But essentially plaintiff is left without an
2 expert.

3 However, to cure this predicament that the
4 plaintiff is in, all you need is a replacement expert. Then
5 he would be placed in the same position that he was in
6 before this whole predicament occurred at the 12th hour as
7 Ms. Ah Loy has said. This is not an opportunity for the
8 plaintiff not only to pick a different expert and to replace
9 Dr. Stark, but, as he stated, he wants to pick several
10 different experts, additional experts to testify to all of
11 these different issues. This is not an opportunity to do
12 that. That would essentially prejudice both defendants, the
13 sheriff's office, the board of county commissioners, and
14 Turn Key that were not prepared to this kind of change in
15 discovery and strategy on plaintiff's part. That would put
16 both defendants in an unfair and prejudiced position. And
17 that would, in fact, put plaintiff in a different position
18 than he was before, which would also be unfair and
19 prejudicial to the defendants.

20 And that's why we would request that the new
21 replacement expert that he would get, that his testimony
22 would be limited to the scope of the testimony of Dr. Stark.
23 Because then plaintiff's counsel and plaintiff would be in
24 the same position that he was before this predicament, and
25 he doesn't get to re-litigate the case just because this had

1 occurred.

2 THE COURT: And that was the -- you -- at the end
3 there, you put it in a nutshell. And let me pose it to you,
4 Mr. Howe, and this is -- this will be it as far as argument.
5 But, I mean, counsel have been gracious enough to understand
6 the predicament, and don't see them jumping up and down and
7 gnashing their teeth and pulling their hair when I say I'm
8 going to grant your motion in part by giving you some more
9 time, and by letting you have at least one substitute -- one
10 substitute expert. But it seems like you're using the
11 predicament -- and there's nothing wrong with this, by the
12 way. You're using the predicament to sort of not just put
13 yourself back in the position you were in, but to bolster
14 and put yourself in a better position than you were in
15 through -- I mean, you're in the predicament through no
16 fault of your own, but why should you get to be in a better
17 position because your expert put you in this predicament?

18 MR. HOWE: Your Honor, may I reply?

19 THE COURT: Absolutely.

20 MR. HOWE: First of all, I'd like to refer to the
21 case that counsel cited in stating that my expert should be
22 limited to certain testimony. I believe it's important, and
23 the Court's well aware of this, that the Court has broad
24 discretion in these discovery matters and schedule order
25 issues. Because of the broad discretion, I believe the

1 Court is also able to articulate and distinguish whether
2 certain facts are different enough or distinguishable enough
3 to warrant a different type of relief other than that that's
4 requested by the case law that I believe they're trying to
5 hammer down to you.

6 So my first response is, in *George Martin and*
7 *Janet Martin vs. Interstate Battery System*, the facts in
8 this case, Your Honor, it was a case that was involving the
9 Martins, and they requested that their expert, Dr. Jacobson,
10 be substituted for Dr. Bosch, who was an expert that was
11 actually within the same facility and supposedly had been
12 involved with the preparation of the report that Dr.
13 Jacobson had done. However, what's very important and I
14 believe is distinguishable in this case, Your Honor, is I'm
15 not asking, after my expert's been deposed, for a do-over.
16 That's not the case that I'm at. And I'm not asking, after
17 I've deposed their experts, for a do-over. This is not a
18 do-over. This is something that I want the Court to be able
19 to recognize that this is something that, based on my prior
20 experiences with Dr. Stark, I have been blindsided. And
21 because of that, because I'm an advocate for the plaintiff,
22 my client is prejudiced.

23 Your Honor, I'm not asking that my expert be
24 able to come up with any opinions outside the scope of
25 anything that I believe Dr. Stark was going to testify to,

1 or that their experts were going to testify to. And I
2 believe that the issues -- yes.

3 THE COURT: Let me stop right there. You say,
4 even if you pick another -- more than one expert, if I allow
5 you to do that, they're not going to testify outside the
6 realm of what Dr. Stark was going to testify to?

7 MR. HOWE: Well, Judge, that is where we have this
8 underlying issue --

9 THE COURT: It's not underlying. It's way up
10 here.

11 MR. HOWE: -- where the standard of care --
12 standard of care affects the jail policies and procedures.
13 My understanding, and what I'm asking for this Court to
14 allow the plaintiff to do in these circumstances, is to --
15 because the defendant is providing an expert that's going to
16 testify as to the policies and procedures, then I'm left
17 with no alternative but to be able to at least have an
18 expert to rebut that testimony later.

19 So what I'm asking, Judge -- I believe that I
20 can get this resolved. I believe I have an expert that I've
21 talked to who will be able to testify as to the standard of
22 care. But the standard of care will also go to the policies
23 and procedures and how they affected the standard of care.
24 That's the one issue.

25 The second issue that I have, Your Honor, is

1 my expert that can do that that I'm still looking into -- I
2 have not retained this person -- but he is not qualified as
3 a neurosurgeon or hematologist-oncologist to provide a
4 causation opinion. Therefore, what I'm asking is, one, to
5 be able to have an expert that can testify to the standard
6 of care and the policies and procedures, whether they were
7 adequate or inadequate and that led to the denial of medical
8 care and treatment to my client while he was a pretrial
9 detainee. The other expert that I necessarily need to have
10 is going to go to causation, which is either -- it's going
11 to have to be a neurosurgeon or maybe a
12 hematologist-oncologist.

13 THE COURT: So you're talking two.

14 MR. HOWE: Yes, Your Honor.

15 THE COURT: Okay. Let me -- you all just hang out
16 for a little bit and it won't be long, and I'll take a
17 little break and think through this and come up with some
18 answer that will be unsatisfactory to everybody.

19 MS. AH LOY: Your Honor, may I add just one last
20 thing? I apologize. I think it's important to your
21 determination to consider.

22 THE COURT: What now?

23 MS. AH LOY: Our witness lists were due in this
24 case over a month ago, and defendants, at that time, did
25 disclose that we were calling a neurosurgeon and a nurse, so

1 I do think that it's difficult to say that there was not
2 knowledge that a neurosurgeon would be necessary. And the
3 rebuttal expert deadline has not yet passed in this case.

4 THE COURT: Okay.

5 MS. AH LOY: That's all I have.

6 THE COURT: No, thank you. And that was helpful.
7 I appreciate it. Okay. Thank you.

8 *(Off the record at 10:47 a.m.)*

9 *(Back on the record at 11:03 a.m.)*

10 THE COURT: All right. We're back on the record.
11 Parties -- I mean, not parties -- counsel are all present.

12 As the saying goes among judges, if you don't
13 make one decision a day you don't like, you're not doing
14 your job.

15 What's come down to it from my standpoint is
16 I've considered the factors in *Magraff vs. Lowes* and find
17 that the motion should be granted in part. Plaintiff will
18 be given 30 days -- well, we're going to move the trial date
19 to the January docket, which is basically a 30-day
20 extension. Plaintiff will be allowed to substitute expert
21 witnesses. The expert witnesses cannot go out the general
22 bounds of the Dr. Stark's report. Dr. Stark's report, to my
23 mind, talks about causation and standard of care, which
24 seems like it covers the plaintiff to the extent they won't
25 be -- it won't be substantially prejudiced. Frankly, it

1 sort of comes down to this: If Dr. Stark had never
2 withdrawn and plaintiff had come in and said, oh, read
3 defendants' expert reports, we need another expert, I would
4 have said no. And that's sort of where we were.

5 I'm not -- I mean, Mr. Howe is being a
6 zealous advocate for his client. But I'm afraid that, in
7 allowing extra experts, it would be taking a difficult and
8 unfortunate situation and using it to their advantage. And
9 I don't -- I think that does prejudice the defendant in
10 general. Whether specifically it does, whether there would
11 be need to re-take all those depositions, I am a little
12 skeptical of that. But I do also think that 30 days isn't
13 going to -- isn't going to kill you. In fact, that's what
14 defense counsel recommended in their -- in their responses
15 to the motion.

16 Here's the problem for both sides.
17 Mr. Artus, I think we've talked about this in a previous
18 case. I don't think I did it to you. But we're a little
19 busy right now, and January docket has 12 other civil cases
20 and I think 12 criminal cases, one of which has 23
21 defendants. Now, there's a good chance of course, just like
22 I say to lawyers all the time when they say, well, I have a
23 case that week, judge, well, 97 percent of the time, that
24 case is going to settle, okay. And so that's probably about
25 the same for me, too. But I'm setting you on the January

1 docket, and it's going to be a trailing docket. So I hate
2 that.

3 So I imagine, practically, what's going to
4 happen is you're going to have to do all your depositions of
5 your experts by video. Maybe you were going to anyway.
6 But, so that's one. And I apologize for that. That's not
7 being punitive on my point. That's just the way the ball
8 bounces.

9 Now, one other -- so I think that resolves
10 that issue. The other issue is Dr. Stark. You all are
11 going to get records from him justifying his inability to be
12 an expert? I'm going to get those. Under those
13 possibilities that there isn't substantiation there, all
14 bets are off. And, in fact, upon application, I may allow
15 defendants to take Dr. Stark's deposition regarding his
16 withdrawal and his provision of medical records to justify
17 his withdrawal. Let's hope it doesn't come to that. I
18 don't want it to. But if -- if there's some subterfuge
19 going on on Dr. Stark's part, all bets are off, okay?

20 I tried to split the baby. I know it's not
21 the way plaintiffs would have hoped completely. I hope it
22 gives you enough time. I'm glad you already started looking
23 and perhaps found an expert. But we'll put off -- we'll
24 enter a new scheduling order moving the dates commensurate
25 with a January trial date. Okay. Mr. Artus.

1 MR. ARTUS: Tomorrow we have a deadline under the
2 current scheduling order for motions in limine, and I
3 understand your order to say wait on that.

4 THE COURT: Yeah. We'll -- we'll give you new
5 dates for everything, okay? Sure.

6 MS. AH LOY: And I just want -- I think you
7 answered it, but I want clarification to make sure I
8 understand. Is plaintiff going to be allowed leave to get a
9 neurosurgeon or nurse expert?

10 THE COURT: No.

11 MS. AH LOY: Okay.

12 THE COURT: No. That is -- I mean, just like I
13 said, if he'd come in here without Dr. Stark having --
14 having withdrawn, I wouldn't let him do that, because the
15 time for that is after. And because, as you said, that was
16 in your witness list I don't know how many weeks ago. So I
17 am correct on that; right? Okay. Mr. Howe.

18 Let me compliment you all. You all are doing
19 a great job of using the microphones. Usually that's what
20 I'm yelling at lawyers the most about. Go ahead, Mr.
21 Howe.

22 MR. HOWE: Your Honor, with respect to your order,
23 Dr. Stark's report covered two issues. It covered standard
24 of care and causation. So with respect to the causation
25 issue, what expert am I permitted to get? Are you saying

1 another hematologist-oncologist?

2 THE COURT: I'm not going to advise you on on what
3 you need to do. I'm just going to say -- and I'll even --
4 let me say I'll even allow you to get more than one expert.
5 You can get two experts, okay? One for standard of care and
6 one for -- one for causation. But they can't go out the
7 bounds of Dr. Stark's opinions. Does that make sense?

8 MR. HOWE: Yes, Your Honor. With respect to the
9 standard of care, that also would include the policies and
10 procedures of the jail --

11 THE COURT: Well, I think your --

12 MR. HOWE: -- that he was testifying to, wouldn't
13 it?

14 THE COURT: Policies and procedures were not
15 specifically mentioned in Dr. Stark's report, okay?

16 MR. HOWE: Yes, Your Honor.

17 THE COURT: He talked about the standard of care,
18 and that the jailers should have recognized this was a
19 problem and done something about it. Now, as far as
20 policies and procedures, those weren't mentioned in the
21 report. So even if none of this had ever come up, I don't
22 think I could have allowed him to testify about that.

23 Now, I don't want to practice law for you,
24 okay, and I don't want to invite more work for me. But
25 probably, if I was in your position, I'd have your expert

1 testify to everything and everything he wants to try to
2 testify to, and then put the burden on the defendant to try
3 to limine that out. Sorry, guys. But that's what I'd do,
4 okay, if I was in your position. I mean, better to ask
5 forgiveness than permission I guess. So I'm not inviting
6 you to do that. I think you should limit it to that report.
7 But if I have to limine it out, I will. So, yes Mr. --
8 Ms. Ah Loy.

9 MS. AH LOY: I have one last question. We are
10 currently set for a settlement conference on October 25th.
11 Will that date be moved as well?

12 THE COURT: I'd like for it not to be. But if you
13 think it's going to be totally worthless, then I will.
14 Who's it with?

15 MR. ARTUS: Shreder.

16 THE COURT: Why don't you confer, and, if you want
17 to move it, file a joint motion or a single motion. I
18 don't -- I mean, hopefully you can agree on that. But I'd
19 rather it go ahead, but I understand if you can't.

20 So, all right. Mr. Howe, anything further?

21 MR. HOWE: Yes, Judge. I just want to clarify,
22 with respect to the causation issue, that is addressed in
23 Dr. Stark's report.

24 THE COURT: Yes, it is.

25 MR. HOWE: You're saying that you do not want me

1 to go outside of that report?

2 THE COURT: Correct.

3 MR. HOWE: My question is, does that mean you're
4 limiting to a hematologist-oncologist, or that I can have
5 somebody who can testify to that issue that -- did you --
6 did you already clarify that, Judge?

7 MR. COUNTS: Yeah, he said -- he's already covered
8 it.

9 THE COURT: I'll be glad to try. Okay.

10 MR. HOWE: I'll confer with my counsel.

11 THE COURT: Okay. Thank you. Sure. I mean,
12 right now or at another time?

13 MR. HOWE: Judge, counsel clarified that. I'll
14 withdraw my question.

15 THE COURT: Thank you. Is there anything else
16 that I can do to you or for you?

17 MR. HOWE: I'll go sit down. Thank you, Your
18 Honor.

19 THE COURT: Okay. Ms. Ah Loy?

20 MS. AH LOY: Aside from the settlement conference,
21 I just want to make sure I understand where it's fair for us
22 to assume, until further directed from the Court, that the
23 remaining deadlines are stricken?

24 THE COURT: The remaining deadlines are stricken.
25 And, actually, what I just -- your question is good because

1 I would like to make it there be no more lay discovery. The
2 only discovery to go on from now on is expert discovery,
3 unless you file a motion showing me good cause. And there
4 may be. But right now, it's just expert discovery, okay?

5 MS. AH LOY: Thank you.

6 THE COURT: All right. Ms. Thompson?

7 MS. THOMPSON: Nothing further, Your Honor.

8 THE COURT: Mr. Artus?

9 MR. ARTUS: That's all I have.

10 THE COURT: Mr. Counts, I don't know if I asked
11 you.

12 MR. COUNTS: That's all, Your Honor. Thank you.

13 THE COURT: Okay. Ladies and gentlemen, thank you
14 for your excellent presentation. This was -- this was a
15 hard one. I'm already late for another meeting. Don't feel
16 guilty about it, please. Feel a little guilty.

17 *(Off the record at 11:13 a.m.)*

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C E R T I F I C A T E

I, Ken Sidwell, Certified Shorthand Reporter for the Eastern/Northern Districts of Oklahoma, do hereby certify that the foregoing is a true and accurate transcription of my stenographic notes and is a true record of the proceedings held in the above-captioned case.

I further certify that I am not employed by nor related to any party to this action, and that I am in no way interested in the outcome of this matter.

In witness whereof, I have hereunto set my hand this 12th day of November, 2018.

s/Ken Sidwell
Ken Sidwell, CSR-RPR
United States Court Reporter